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May 24, 2017

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: **REQUEST FOR CONFIDENTIAL TREATMENT**
ClearCaptions, LLC
CG Docket Nos. 03-123 and 10-51

Dear Ms. Dortch,

ClearCaptions, LLC (ClearCaptions), pursuant to Federal Communications Commission (FCC or Commission) rule sections 0.457 and 0.459,¹ respectfully requests confidential treatment of certain information contained in the enclosed Comments. ClearCaptions is also submitting a redacted version of these Comments pursuant to the *Protective Order* adopted in the above-captioned dockets, DA 12-402, released March 14, 2012.²

ClearCaptions hereby requests confidential treatment for all information contained after the headings *****BEGIN CONFIDENTIAL INFORMATION***** and before the headings *****END CONFIDENTIAL INFORMATION*****. As described below, the information contained within those headings is proprietary and business information that is not customarily disclosed to the public or within the industry and is subject to Exemption 4 under the Freedom of Information Act ("FOIA").³

¹ 47 C.F.R. §§ 0.457, 0.459.

² See *Structure and Practices of Video Relay Service Program, et al.*, CG Docket Nos. 03-123 and 10-51, Protective Order, DA 12-402 (March 14, 2012) ("Protective Order").

³ 5 U.S.C. § 552(b)(4).

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As this information is submitted voluntarily and absent any requirement by statute, regulation, or the Commission, ClearCaptions requests that, in the event that the Commission denies ClearCaptions's request for confidentiality, the Commission return the materials without consideration of the contents therein.⁴

(1) Identification of the specific information for which confidential treatment is sought.

ClearCaptions hereby seeks confidential treatment for all of the information in the enclosed Comments that is contained after the headings *****BEGIN CONFIDENTIAL***** and before the headings *****END CONFIDENTIAL*****. The confidential information ("Confidential Information") is confidential commercial information under Exemption 4 of the FOIA; it contains commercial and business information that is not customarily disclosed to the public. This includes information about IP CTS market share and other commercially sensitive information. Accordingly, pursuant to Section 0.459(a) of the Commission's rules, ClearCaptions requests that such information not be made routinely available for public inspection, consistent with the *Protective Order*.⁵

(2) Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission.

The enclosed Comments are being filed in response to a Public Notice⁶ seeking comment on the payment formula and fund size estimate for Interstate Telecommunications Relay Service.

(3) Explanation of the degree to which the information is commercial or financial or contains a trade secret or is privileged.

The Confidential Information constitutes proprietary commercial and business information under Exemption 4 of the FOIA.⁷ Accordingly, ClearCaptions hereby requests that such information be treated as Confidential Information under the *Protective Order* and not be made routinely available for public inspection.

(4) Explanation of the degree to which the information contains a service that is subject to competition.

⁴ 47 C.F.R. § 0.459(e).

⁵ 47 C.F.R. § 0.459. *See generally*, *Protective Order*.

⁶ *Rolka Loube Associates Submits Payment Formulas And Funding Requirement For The Interstate Telecommunications Relay Services Fund For The 2017-2018 Fund Year*, Public Notice, CG Docket Nos. 03-123 & 10-51, DA 17-445 (May 10, 2017).

⁷ 5 U.S.C. § 552(b)(4).

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The data and information contained in the Confidential Information being provided to the Commission describe sensitive operational and market details relating to the provision of IP CTS—a highly competitive service.

(5) Explanation of how disclosure could result in substantial competitive harm.

The presence of competitors in the IP CTS market and the likelihood of competitive injury to ClearCaptions threatened by release of this information should compel the Commission to withhold the information designated as Confidential Information from public disclosure. The Commission has provided assurances that it is “sensitive to ensuring that the fulfillment of its regulatory responsibilities does not result in the unnecessary disclosure of information that might put its regulatees at a competitive disadvantage.”⁸

(6) Identification of any measures taken by the submitting party to prevent unauthorized disclosure.

ClearCaptions takes routine measures to ensure the confidentiality of this information during normal business operations, including instructing its employees and contracting partners not to disclose such information outside of ClearCaptions, and restricting access to this information internally.

(7) Identification of whether information is available to the public and the extent of any previous disclosure of the information to third parties.

The subject information is not ordinarily available to the public or to any third party.

(8) Justification of the period during which the submitting party asserts that material should not be available for public disclosure.

As described above, the subject information contains highly sensitive ClearCaptions market and other information subject to FOIA Exemption 4.⁹ For this reason, ClearCaptions respectfully requests that the Commission protect this information from public disclosure indefinitely.

(9) Any other information that the party seeking confidential information believes may be useful in assessing whether its request for confidentiality should be granted.

As the subject information is being submitted voluntarily, ClearCaptions reiterates its request that, in the event that the Commission denies ClearCaptions’s request for

⁸ *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Report and Order, 13 FCC Rcd 24816, ¶ 8 (1998).

⁹ 5 U.S.C. § 552(b)(4).

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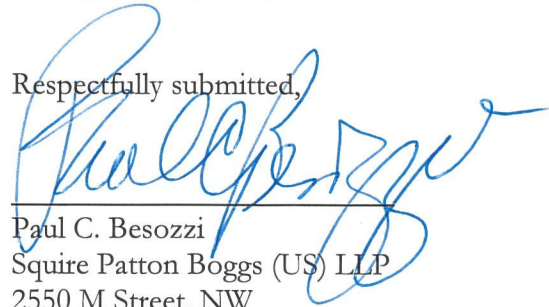
May 24, 2017

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confidentiality, the Commission return the materials without consideration of the contents therein.

Should you have any questions concerning the foregoing request, please contact the undersigned.

Respectfully submitted,



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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Telecommunications Relay Services and)	CG Docket No. 03-123
Speech-to-Speech Services for Individuals)	
with Hearing and Speech Disabilities)	
)	
Structure and Practices of the Video Relay)	CG Docket No. 10-51
Service Program)	
)	

COMMENTS OF CLEARCAPTIONS, LLC
ON ROLKA LOUBE ASSOCIATES
PAYMENT FORMULA AND FUND SIZE ESTIMATE

By Public Notice, dated May 10, 2017, the Commission sought comment on the payment formula and fund size estimate for Interstate Telecommunications Relay Services (TRS) for July 2017 through June 2018, as submitted by the TRS Fund Administrator.¹ ClearCaptions, LLC (“ClearCaptions” or “Company”) focuses its comments herein on: (1) the practical and policy considerations supporting the ongoing use of the Multistate Average Rate Structure (MARS) plan methodology for interstate and intrastate Internet Protocol Captioned Telephone Service (IP CTS); (2) the issues associated with various cost-based rate options set forth in the TRS Fund Administrator Estimate; (3) ClearCaptions’ position on a possible IP CTS compensation rate freeze; (4) the impact of IP CTS on senior health; and (5) the need for the TRS Fund

¹ *Rolka Loube Associates Submits Payment Formulas And Funding Requirement For The Interstate Telecommunications Relay Services Fund For The 2017-18 Fund Year*, CG Docket Nos. 03-123 & 10-51, Public Notice, DA 17-445 (May 10, 2017) (“TRS Fund Administrator Estimate PN”); *see also* Rolka Loube Associates LLC (“Rolka Loube”), *Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate*, CG Docket Nos. 03-123 & 10-51 (May 2, 2017) (“TRS Fund Administrator Estimate”).

Administrator, as well as the FCC, to review and update accordingly the sources that contribute to the TRS Fund.

I. Utilizing MARS for IP CTS

For efficiency and fairness reasons, the Commission adopted MARS, a market-based rate methodology, for IP CTS.² The Commission found that using competitively bid state rates to compute reimbursement rates for the interstate leg of TRS, Captioned Telephone Service (CTS), and Speech-to-Speech (STS), as well as for both the intra- and interstate legs of IP CTS, would “simplify the rate setting process and result in more predictable, fair, and reasonable rates.”³

ClearCaptions, based on its relative size in the market and cost structure, still supports the Commission’s historical position on this issue. As previously noted by ClearCaptions⁴:

- 1) The Commission understood that a formula based on competitive bidding not only “better approximates providers’ reasonable costs,” but also “promotes the efficient recovery of all costs.”⁵
- 2) The Commission recognized that the MARS plan decreased the burden on the TRS Administrator and on Commission staff, because it “eliminates the costs, burdens, and uncertainties associated with evaluating, correcting, and re-evaluating provider data.”⁶

² See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140, 20152 ¶ 16 (2007) (“2007 TRS Cost Recovery Order”).

³ *Id.* ¶ 16.

⁴ *Comments of Purple Communications, Inc. On Rolka Loube Associates Payment Formula And Fund Size Estimate*, CG Dockets 10-51 and 03-123, May 24, 2016 (note: at the time ClearCaptions was a division of Purple; the Company is now an independent entity.).

⁵ *Id.* ¶ 18.

⁶ *Ibid.*

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- 3) The Commission emphasized that “[o]ur mandate ... is not to achieve any particular rate level, but to ensure that the rates correlate to actual reasonable costs and that the *process* of determining the rates is fair, efficient, and predictable.”⁷
- 4) Support of a market-based rate structure was further emphasized when the Commission expressed its desire to also implement a market-based formula in setting VRS rates.⁸
- 5) The MARS methodology has been utilized since the 2007 TRS Cost Recovery Order was issued.⁹
- 6) The Commission chose to compensate IP CTS at the CTS MARS rate because it found that the cost recovery rate for CTS “will more accurately reflect the reasonable actual costs of providing IP CTS.”¹⁰
- 7) Similarly, the Commission chose to apply the TRS MARS rate to STS services.¹¹
- 8) Over the entire ten-year period since the Commission first began applying MARS for determining IP CTS rates to the 2017-2018 proposed rate, there has been only a 19.5% increase in the rate – less than a 2% year-over-year inflationary adjustment.¹²

⁷ *Id.* ¶ 21 (emphasis retained).

⁸ *Structure and Practices of the Video Relay Service Program, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 & 03-123, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618 8625, ¶ 10 (2013) (“*2013 VRS Reform Order*”) (explaining that the Commission was implementing reforms designed to move “compensation rates for VRS providers toward a unitary, market-based compensation rate”).

⁹ *2007 TRS Cost Recovery Order* ¶ 38.

¹⁰ *Ibid.*

¹¹ *Id.* ¶ 34.

¹² TRS Administrator Fund Estimate, p. 19 (proposing \$1.9467); *compare 2007 TRS Cost Recovery Order* ¶ 1 (adopting the MARS plan rate of \$1.629 for the 2007/2008 Fund Year).

In the face of this backdrop, the Commission should use extreme caution when considering an alternative mechanism for establishing the IP CTS reimbursement rate, as suggested by the TRS Fund Administrator.¹³ As the Commission has concluded, “the cost recovery rate for CTS [(MARS)] will more accurately reflect the reasonable actual costs of providing IP CTS.”¹⁴

Additionally, as a provider with an emerging market share, the current 2017-2018 MARS rate results in *****Begin Confidential***** [REDACTED]

[REDACTED] *****End Confidential***** As such, ClearCaptions feels that the current MARS methodology accurately reflects a reasonable compensation rate for an IP CTS provider of ClearCaptions’ size.

The TRS Fund Administrator comments that “the [proposed 2017-2018] rate, \$1.9467, is substantially above the cost of a marginal or high-cost provider, at \$1.72. Therefore, the rate is allowing even an inefficient provider to earn above normal profits” and “... the profits of an inefficient provider are excessive...”¹⁵ It should be noted, however, that these “excessive” and “above normal” profits for the high-cost provider reflect a pre-tax profit margin of 11.6% based on allowable costs. To say that an 11.6% pre-tax profit, based on (*emphasis added*) “allowable costs” is excessive or above normal perfectly illustrates the problem with the current cost-based rate methodology and the return on invested capital approach employed in TRS. Further, it should be noted that a subset of costs considered not “allowable” includes research and development, intellectual property, and costs associated with providing IP CTS phones to

¹³ TRS Administrator Fund Estimate, pp. 17-23.

¹⁴ 2007 TRS Cost Recovery Order ¶ 38.

¹⁵ TRS Administrator Fund Estimate, pp. 19-20.

consumers. These very real and required costs are not reflected in the TRS Fund Administrator's \$1.72 figure. Again, stating profits are excessive at 11.6% based on a partial cost disclosure seems, Clear Captions respectfully submits, premature and misleading. As such, compensation rates must provide returns to operators that are commensurate with the risk of regulatory and demand uncertainty.

ClearCaptions understands that while the MARS methodology is appropriate for a company of our size, it may not be appropriate for the industry as a whole. As such, the Company looks forward to working with the Commission to ensure that it is a good steward of the TRS Fund. Initially, the Commission made a sound choice in moving towards market-based rates. In doing so, the Commission implicitly recognized that rate structures must encourage investment in the industry and support innovation and quality. Given the track record of cost-based rates in VRS, the Commission should avoid further propagating TRS with the current version of the cost based and return-on-investment rate methodology and should seek an alternative methodology that ensures the sustainability of the TRS Fund while at the same time ensuring providers are able to earn a profit margin commensurate with the risks associated with providing reliable, high quality service.

II. Issues with the Administrator's Alternative Rate Methodologies.

While the Commission does not directly seek comment on the alternative compensation-setting mechanisms advanced by the Administrator, ClearCaptions respectfully submits that a brief discussion is pertinent based on the potential of a pending rulemaking.

a. Rate Based on Weighted Average Cost Is Unsound in an Unequally Distributed Market

The Administrator presented six cost-based rate alternatives in its recent 2017-2018 Estimate.¹⁶ However, it is well documented that the cost-based rate structures the FCC has utilized have failed in TRS.¹⁷ Additionally, the FCC's cost-based rate methodologies have forced service providers out of the market and thus limited consumer choice, while reducing quality and functionality.¹⁸ More fundamentally, the use of weighted-average costs for determining rates in any unbalanced market structure virtually assures vastly inequitable margins among providers and inhibits marketplace competition.¹⁹

¹⁶ See TRS Fund Administrator Estimate p. 19.

¹⁷ Comments of Purple Communications, Inc., CG Docket Nos. 10-51 & 03-123, at 7 (Dec. 9, 2015) ("Purple VRS Rate Freeze Comments") (explaining that the "dramatically declining rate schedule presently stands to effectively eliminate any possibility of any competition to the monopolist in the future"); Purple Communications, Inc., Letter, CG Docket No. 03-123 (Oct. 15, 2014) ("Purple Notice of IP Relay Service Termination") (providing notice that Purple would cease providing IP Relay service after concluding that Purple "cannot operate an IP Relay service under the current state of the Commission's approach to the industry").

¹⁸ See *Structure and Practices of the Video Relay Service Program* et al., CG Docket No. 10-51 et al., Report and Order, 31 FCC Rcd 2339, 2344 ¶¶ 1, 11 (Mar. 3, 2016) (providing "limited compensation rate relief" for the "smallest VRS providers," and indicating a concern that without "rate relief" smaller providers might be eliminated from the market or unable to effectively compete); Hancock, Jahn, Lee & Puckett, LLC Letter, CG Docket Nos. 10-51 & 03-123 (Mar. 2, 2016) (serving notice that CAAG/Star VRS will no longer provide VRS due to the impact of the rate cuts set forth in the FCC's *2013 VRS Reform Order*); see also *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CG Docket No. 03-123, DA 14-1899, 29 FCC Rcd 16273, 16275 ¶ 6, 16277 ¶ 10, (Dec. 29, 2014) (noting that "four of five IP Relay providers have terminated their provision of service over the past two years" and "increas[ing] the IP Relay compensation rate" for the "sole remaining provider" of IP Relay); Purple Notice of IP Relay Service Termination; Sorenson Communications, Inc. Letter, CG Docket No. 03-123, at 1 (July 8, 2013) (serving notice that Sorenson would no longer provide IP Relay services because "the IP Relay rates set by the Commission in its order of July 1, 2013 ... are simply too low to sustain a high quality service, and they are further scheduled to be reduced by 6% in each of the following years"); AT&T Services Inc. Withdrawal, CG Docket No. 10-51 (May 28, 2013) (withdrawing from the Commission's consideration AT&T Corp.'s application for certification as a provider of IP Relay).

¹⁹ See Purple VRS Rate Freeze Comments at 9 (explaining that when a provider has a "near-monopolistic position within the market, any application of a 'weighted average' will,

The Administrator's data supports the conclusion that compensation based on "weighted average" does not work in any market where the market is not evenly distributed. Such a scenario exists in the current VRS marketplace under the current rate structures, wherein the cost for the single dominant provider is dramatically lower than the average costs of the other competitive providers.²⁰

For IP CTS, where the ***Begin Confidential*** [REDACTED]
[REDACTED] ***End Confidential***, the same argument can be made. This argument is further supported when the projected cost of the "marginal or high-cost provider" is approximately \$1.72 for the upcoming fund year, which is significantly higher than the 2016 industry "weighted average" cost of \$1.2965.²¹

Any rate methodology should support – and certainly should not undermine – the competition and consumer choice goals of the Commission.²² The Commission must implement a rate structure that results in fair returns to providers in light of their respective economies of scale and operational risks, while at the same time attracts investment into the industry, supports innovation, and results in a high-quality service that meets the needs of the consumers served.

mathematically, ignore the costs of all other industry providers, as their volumes do not carry enough market 'weight' to materially impact a weighted average cost calculation").

²⁰ *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-512, Report and Order, Notice of Inquiry, Further Notice of Proposed Rulemaking and Order, 32 FCC Rcd 2436, 2473 ¶ 89 (2017).

²¹ TRS Fund Administrator Estimate, Exhibit 1-3.

²² *2013 VRS Reform Order* ¶¶ 199-200 (implementing "structural reforms" that the Commission predicted would effect a "substantial alleviation of the 'lock-in' problem that has limited the ability of smaller rivals to compete effectively with the largest provider" and also "make it more feasible for smaller entities to compete efficiently," and also opting to "retain [the] rate tiers" because "eliminating the rate tiers immediately could force out some of the smallest remaining providers, unnecessarily constricting the service choices available to VRS consumers during the period prior to implementation of structural reforms").

b. Allowable Cost Methodology Needs to be Updated

As others have commented, the current “allowable” cost-based reporting rules do not fully reflect the costs associated with providing IP CTS.²³ ClearCaptions supports CaptionCall’s comments around potential intellectual property licensing fees being considered as part of a provider’s cost structure, as well as the costs associated with the research and development of Automatic Speech Recognition (ASR).²⁴

The Commission is actively considering the potential application of ASR in IP CTS. Both MITRE and the FCC’s Disability Advisory Committee have been tasked with reviewing the potential and readiness of ASR for IP CTS. For the Commission to consider moving to the current “allowable” cost based approach while at the same time effectively pushing providers to invest in ASR technology, it is only logical that a rate structure would be developed that would include the costs providers have to incur to invest in this potential technology. To push for development in this field while at the same time ignoring provider’s costs associated with this development would appear to be contradictory.

Additionally, the current “allowable” cost approach is established to only capture a portion of a business’s cost to provide IP CTS. According to the “2016 Annual TRS Provider Data Request Filing Instructions,” the following reflects a partial list of costs not to be included in the provider’s annual cost submissions:²⁵

²³ *Ex Parte Notice* from John T. Nakahata, Counsel to CaptionCall, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, CG Dockets Nos 03-123 and 13-24, April 24, 2017, p.2.

²⁴ *Id.*, p.3 (regarding IP costs).

²⁵ Interstate TRS Fund 2016 Annual TRS Provider Data Request Filing Instructions, 2016 Version Released 1/12/2017, Appendix B, TRS Administrator Estimate, pp. 2-3.

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- Indirect overhead costs are not reasonable costs of providing TRS. Appropriate overhead costs are those costs directly related to, and which directly support, the provision of relay service. Indirect overhead costs may not be allocated to TRS by an entity that provides services other than TRS based on the percentage of the entity's revenues that are derived from the provision of TRS.
- Reasonable executive compensation for persons who directly support the provision of TRS is compensable from the TRS Fund, but if executives of a company that provides a variety of services in addition to TRS do not personally work on TRS issues, no part of their salaries can be included in the company's TRS cost submission.
- Costs attributable to relay hardware and software used by the consumer, including installation, maintenance costs, and testing are not compensable from the TRS Fund.
- E911 charges imposed on TRS providers under a state or local E911 funding mechanism.

It could easily be implied that a portion of the current rules around "allowable" costs are anti small-business and are inherently structured in way to ensure that small, stand-alone entities can never operate at the same "cost" structure as larger entities where IP CTS is merely a subsidiary or division of that company. For small businesses that are 100% committed to the provision of a single relay service, there are no "unreasonable" indirect overhead costs or executive compensation. In other words, the small business reports its entire cost of providing the service in accordance with the Americans With Disabilities Act (ADA). However, for these larger business (i.e., Sprint), the costs reported to the Administrator only reflect a partial picture

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of what it costs for a business to provide a particular relay service. To then compare a “partial” cost structure of a larger, multi-divisional business, to that of a holistic cost structure of a small business, while setting rates based, from a weighted average perspective, on the partial structure, would appear to facially discriminate against an emergent or small provider seeking to enter or already operating in this federally mandated service.

Furthermore, ClearCaptions recommends the Commission revisit its decision not to include CPE costs as “allowable” in IP CTS. As previously noted, costs attributable to relay hardware and software used by the consumer, including installation, maintenance costs, and testing, are currently not compensable from the TRS Fund. Yet, the Commission must ensure that IP CTS users “pay rates no greater than the rates paid for functionally equivalent voice communication services,” and the IP CTS rate does not “discourage or impair the development of improved technology.”²⁶

The National Center for Health Statistics recently reported for individuals 65 and over, only about 23.5% are “wireless only.”²⁷ The Center also measured that about 3.2% of such individuals have no phone service at all. From those two data points, the inverse can be reasonably inferred (i.e., approximately 73% of individuals 65 and over still have landline service into their home). Additionally, according to *Hearing Health Care for Adults*, “the prevalence of hearing loss rises steeply with age....to an estimated 45 percent among the 70- to

²⁶ 47 U.S.C. §§225(b)(1)(D), (d)(2).

²⁷ National Center for Health Statistics, National Health Interview Survey Early Release Program, “Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2016,” Stephen J. Blumberg, Ph.D., and Julian V. Luke, Division of Health Interview Statistics p. 2, *available at*, <https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201705.pdf>.

74-year age group and more than 80 percent in the 85-years-and-older age group.”²⁸



Statistically, the data points to the fact that a majority of IP CTS users are most likely 70-years-old and over. Approximately 73% of these users already are paying for landline service into their home. ClearCaptions believes this statistic is rather conservative when it comes to IP CTS customers as *****Begin Confidential***** *****End Confidential***** of ClearCaptions monthly users utilize landline services and therefore require the installation of ClearCaptions’ Ensemble IP CTS phone. Therefore, ClearCaptions believes that a statistical majority of these users are already paying rates for “functionally equivalent” communication services (i.e., their telephone landline service).

The logical question that follows, is if costs attributable to relay hardware and software used by the consumer, including installation, maintenance costs, and testing, are not compensable from the TRS Fund, and the users of IP CTS are already paying for functionally equivalent service, where exactly are IP CTS providers expected to recover the costs associated with the hardware, testing, installation, and maintenance? Based on these facts, ClearCaptions respectfully recommends that the Commission revisit its position on the allowability of costs associated with relay hardware in IP CTS. They should be considered “allowable,” and thus reported as a cost of service factored into the respective reimbursement rate.

III. ClearCaptions Position on a Possible Rate Freeze

The Commission seeks comments on “whether or not an extension of the current IP CTS compensation rate of \$1.9058 will be sufficient to compensate IP CTS providers for the

²⁸ “Hearing Health Care for Adults: Priorities for Improving Access and Affordability,” The National Academies of Sciences, Engineering, Medicine, Health and Medicine Division, Board on Health Sciences Policy, Committee on Accessible and Affordable Hearing Health Care for Adults, Dan G. Blazer, Sarah B. Domnitz, and Catharyn T. Liverman, Editors, p. 1 , *available at*, <https://www.nap.edu/read/23446/chapter/1> (“Hearing Health Care For Adults Report”).

reasonable costs of providing IP CTS pending the effectiveness of a new rate.”²⁹ While the current IP CTS rate of \$1.9058 results in *****Begin Confidential***** 
 *****End Confidential***** ClearCaptions could support a freeze of the current rate (\$1.9058) based on the freeze being time bound and the Commission issuing an FNPRM wherein the arguments ClearCaptions raised around allowable costs and the weighted average rate methodology can be further discussed prior to the Commission adopting any new rate methodology.

ClearCaptions is hopeful that any new rate methodology results in fair returns to providers in light of their respective economies of scale, whether they be a small start-up or a larger multi-divisional business, and operational risks while at the same time attracting investment into the industry, supporting innovation, ensuring that the Commission is a good steward of the TRS Fund and resulting in a high-quality service that meets the needs of the consumers served.

In an effort to ensure a new rate methodology is adopted, ClearCaptions looks forward to working with the Commission in the coming weeks and months to propose alternative rate methodologies that both (1) enable all companies to earn a reasonable operating margin, irrespective of their size, and (2) help the Commission in its continued efforts to be a conscientious steward of the TRS Fund.

IV. The Impact of IP CTS on Senior Health

ClearCaptions strongly encourages the Commission consider the positive impacts IP CTS provides to individuals with hearing loss. According to the Hearing Health Care for Adults Report:

²⁹ TRS Fund Administrator Estimate PN, p.2.

*“The effects of hearing loss on communication and, as a consequence, social interactions and functional abilities have serious public health implications for adults of all ages. Among older adults – a growing demographic in the United States and globally – hearing loss is a common, chronic disability that escalates especially in those over 80 years of age. A link between hearing ability and cognitive function and dementia has long been recognized but has only recently begun to be systematically studied.”*³⁰

ClearCaptions expresses its strong concerns about several comments within the TRS Fund Administrators Estimate.³¹ On at least five separate occasions within the TRS Fund Administrator Estimate, ClearCaptions noticed the following statements: “[d]ue to.... failure to provide an incentive scheme designed to slow the growth in demand, we are not recommending;”³² “because it does not provide an incentive to mitigate the growth in the TRS Fund, we are not recommending;”³³ “[i]t would....reduce the incentive to over-stimulate demand because it would reduce the profits associated with that demand stimulation;”³⁴ “the failure to directly address the incentive to stimulate demand and uncertainty regarding rates, it is our opinion that Option five is superior to Option six;”³⁵ and “[t]he problem with this option is that there is no incentive....to reduce the incentive to stimulate demand.”³⁶ ClearCaptions is

³⁰ Hearing Health Care For Adults Report, p. 3 (emphasis added).

³¹ TRS Administrator Estimate, pp. 21-23.

³² *Id.*, p. 21 ¶1.

³³ *Id.*, ¶ 3.

³⁴ *Id.*, p. 22 ¶ 2.

³⁵ *Id.*, p. 23 ¶ 1.

³⁶ *Id.*, p. 23 ¶ 2.

extremely concerned about these comments as they seem counterproductive to the fundamental objectives of the ADA.³⁷

Instead of focusing on the overall demand for IP CTS, the Commission should be working with other federal agencies to identify the overall benefits IP CTS provides to the elderly. The ability of senior citizens to continue to live independently all because they have the ability to communicate and stay connected with family, friends, and their doctors, has direct implications for health care. ClearCaptions believes that based on the impacts hearing loss has on senior citizens, as pointed out in Hearing Health Care For Adults Report,³⁸ there could be dire implications for such citizens or potential savings to the overall costs of Medicare depending on which direction the Commission goes with IP CTS. While the overall size of the TRS Fund needed to support expanding demand for IP CTS has consistently grown, when considered in light of what it could represent to overall Medicare costs (or savings by enabling an individual to live independently longer), the TRS Fund could be perceived as a wise investment in helping to control health care costs in America.

V. The TRS Fund Administrator Needs to Advise the Commission on Alternative Sources to the TRS Fund

The Commission established the Interstate Cost Recovery Plan, otherwise known as the TRS Fund, in 1993.³⁹ According to the TRS Fund Administrator's Estimate, the contribution

³⁷ 47 U.S.C. § 225.

³⁸ Hearing Health Care For Adults Report, pp. 2-3.

³⁹ *Telecommunications Services for Individuals with Hearings and Speech Disabilities and the Americans with Disabilities Act of 1990*, CC Docket 90-571, Report and Order and Request for Comments, 6 FCC Rcd 4657 (1991) (setting rules requiring offering of services by July 26, 1993); *Telecommunications Relay Services and the Americans with Disabilities Act of 1990*, CC

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base for the TRS Fund has declined from almost \$82B in 2004 to \$60.2B in 2017. That represents a 27% decline in the overall contribution base over a 14-year period. In light of this material decline in the contribution base ClearCaptions encourages the TRS Fund Administrator and the Commission to evaluate whether or not the rules governing who are responsible for contributing to the TRS Fund have progressed to reflect the advances in telecommunications technology, and service providers over that same 14-year period. For example, even the TRS Fund Administrator points out that “[s]hared tenant services for example do not contribute to the TRS Fund because it appears that the Third Report and Order in CC Docket No. 90-571 restricted TRS to only “common carriers” and not all carriers.”⁴⁰

It is the Commission’s and TRS Fund Administrator’s responsibility to ensure that the TRS Fund is sustainable to meet the requirements of the ADA. A key component of that responsibility is to ensure that the contribution base, and contributors to the base, appropriately reflect the telecommunications services and technology marketplace as it exists today. ClearCaptions recommends that the TRS Fund Administrator include suggestions for additional sources to the TRS Fund as part of its annual TRS Fund Administrator Estimate. In the last 24 years, participants in the delivery of telecommunications services have evolved dramatically with, for example, many cable companies now bundling such services as part of a consumer’s triple play subscription service. It would be reasonable to ask whether or not the existing allocation methodologies for the telephony component of such bundled services remain fair and reasonable or even further if whether or not broadband internet access must now be considered as contribution eligible. The FCC’s rules should be refreshed to ensure that relay services can

Docket 90-571, Second Order on Reconsideration and Fourth Report and Order, 9 FCC Rcd 1637 (1993) (establishing payment formula, fund size and payment schedule).

⁴⁰ TRS Administrator Estimate, p.11.

continue to meet the requirements of the ADA and not be systematically hampered through rate setting exercises where there is a stated intent to “slow growth in demand.”

VI. Conclusion

In summary, ClearCaptions has four principal recommendations in response to the TRS Administrators Estimate PN. *First*, the Commission should only adopt a rate freeze at the current \$1.9058 if (1) it takes into consideration ClearCaptions’ arguments regarding “allowable costs” and weighted average (anti-small-business) cost reporting, and releases and issues an FNPRM around appropriate cost-based reporting; and (2) the current rate is frozen until such time as a new methodology is adopted, one that results in fair returns to providers in light of their respective economies of scale and operational risks, while at the same time attracting investment in the industry, supporting innovation, and resulting in a high-quality service that meets the needs of the consumers served, is adopted. *Second*, the Commission lacks an adequate factual or policy-based basis for adopting any of the TRS Administrator’s suggested cost-based alternatives, particularly in the context of the Commission’s prior cost-based rate adjustments which have driven providers out of the TRS market and reduced consumer choice. Furthermore, the Commission must ensure that any cost based methodology is not anti-small-business. To that end, the Commission should not utilize a weighted average cost to determine rates because, in an unequally distributed market, the resulting rates would not result in fair compensation to any provider, and would create an anticompetitive environment for smaller providers, while rewarding those providers with larger market share. *Third*, the Commission, in assessing any alternative methodologies for determining IP CTS compensation rates, must consider the positive impact IP CTS has on senior health and recognize that a methodology that has the effect of discouraging providers from providing services to qualified users is inconsistent with the ADA.

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While such discouragement may reduce the cost to the TRS Fund, it has potentially compounding cost impacts in healthcare. *Fourth*, the Commission and TRS Fund Administrator need to ensure that the TRS Fund, and the roster of contributors to the TRS Fund, reflect current technology and service models. A diminishing contribution base tied to an increasing demand in relay are two trends that cannot continue. Instead of denying access, or undercompensating providers, the Commission and TRS Fund Administrator should work together to identify “*ALL*” valid and applicable contributors to the TRS Fund.

In any case, as the Commission moves forward to assess how, in the current environment, it might best fulfill its obligations under the ADA with respect to IP CTS, ClearCaptions looks forward to working with the Commission, including to assess the rate methodology appropriate for IP CTS moving forward.

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